

**FEDERAL ELECTION COMMISSION**  
999 E Street, NW  
Washington, D.C. 20463

**SENSITIVE****FIRST GENERAL COUNSEL'S REPORT**

MUR: 5416

DATE COMPLAINT FILED: February 25, 2004

DATES OF NOTIFICATION: March 3, 2004 and  
September 1, 2004

DATE ACTIVATED: July 7, 2004

EXPIRATION OF STATUTE OF LIMITATIONS:  
October 22, 2008

COMPLAINANT: Kyle E. Stephens, Jr.

RESPONDENTS: Wayne Christian  
Wayne Christian for Congress and David  
Chadwick, as treasurerRELEVANT STATUTE 2 U.S.C. § 441i(e)(1)(A)  
AND REGULATION: 11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED: FEC Reports

FEDERAL AGENCIES CHECKED: None

**I. INTRODUCTION**

The issues presented by the complaint in this matter are whether Texas state representative Wayne Christian, a candidate for Congress in 2004, or his principal campaign committee, Wayne Christian for Congress and David Chadwick, as treasurer ("the Committee"), improperly used funds and assets from Christian's state campaign committee and his state office account to benefit his federal race, and whether Christian made an improper loan to the Committee.

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As discussed in more detail below, this Office recommends that the Commission find no reason to believe that Wayne Christian or the Committee violated 2 U.S.C. § 441i(e)(1)(A), that the Committee violated 11 C.F.R. § 110.3(d), or that Wayne Christian or the Committee violated the Act or the Commission's regulations with respect to the loan made by Wayne Christian to the Committee, and close the file.

## **II. FACTUAL AND LEGAL ANALYSIS**

Wayne Christian, a Texas state representative, was an unsuccessful 2004 primary candidate for a seat in Texas' First Congressional District.<sup>1</sup> Although Christian remains a Texas state representative until January 2005, he did not run in 2004 for re-election to the Texas House of Representatives.

While not explicitly alleging that Christian and the Committee illegally used non-federal funds and assets in connection with Christian's federal election, the complainant includes the following representations in his complaint. Under the heading "10.4 [sic] Transfer from Candidate's Nonfederal Committee Are [sic] Prohibited," and an apparent paraphrasing of the language of 11 C.F.R. § 110.3(d),<sup>2</sup> the complainant states that Christian: "listed heavy political expenditures between November and December 31<sup>st</sup> [2003] on his year end report to the Texas ethics committee regarding his State House campaign,"<sup>3</sup> used an automobile purchased with state campaign funds to attend his federal campaign functions; used the Texas state seal and Texas House of Representatives letterhead on his federal campaign literature; and requested in direct

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<sup>1</sup> Christian's statement of candidacy is dated October 22, 2003. The primary was held on March 9, 2004.

<sup>2</sup> 11 C.F.R. § 110.3(d) states, in pertinent part, "Transfers of funds or assets from a candidate's campaign committee or account for a nonfederal election to his or her principal campaign committee...for a federal election are prohibited."

<sup>3</sup> The complainant attaches the disclosure report of Christian's state committee covering the time period of July 1, 2003 through December 31, 2003, but does not point to any specific expenditures contained therein.

1 mail that contributions for his federal race be sent to his Texas Representative district office; the  
2 complainant further states that Christian's Committee's website referred all political and  
3 campaign calls to his state and district offices in Texas. The complainant also alleges, without  
4 any accompanying details, that the Committee's 2003 Year End Report discloses a  
5 "Questionable Loan" by Christian of \$214,152.45.<sup>4</sup>

6 The Federal Election Campaign Act of 1971, as amended (the "Act") prohibits a federal  
7 candidate, or an entity directly or indirectly established, financed, maintained or controlled by a  
8 candidate, from soliciting, receiving, directing, transferring, or spending funds in connection  
9 with a Federal election, unless the funds are subject to the limitations, prohibitions, and reporting  
10 requirements of the Act. 2 U.S.C. § 441i(e)(1)(A).<sup>5</sup> Although no section 441i(e) theory of  
11 liability is explicitly set forth in the complaint, this Office believes that the bulk of the  
12 complainant's assertions are properly analyzed under 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R.  
13 § 110.3(d).<sup>6</sup>

14 Christian denies using state funds or resources to benefit his federal campaign, asserting  
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<sup>4</sup> Although the website, [www.christianforcongress.org](http://www.christianforcongress.org), is no longer accessible, attached to the complaint are two pages apparently printed from the website. On the left-hand side of each page is an address, a telephone number and a facsimile number for Christian's state capitol office and his district office, respectively. The second page also includes instructions for mailing contributions to Christian's federal campaign office, which has the same address as does his district office. In addition, the complainant attaches a copy of a Christian campaign mailing, which includes a solicitation for donations, that is partially illegible. Finally, without any corresponding explanatory text, the complaint includes a letter by the Texas Ethics Commission dated May 6, 1999, in response to what appears to have been a request by Christian for waiver or reduction of a \$4,300.00 late filing fee assessed against him.

<sup>5</sup> Texas law does not limit individual contributions to state candidates. *See* Elec. Code § 253; *see also* Campaign Finance Guide for Candidates and Officeholder Who File with the Texas Ethics Commission, at <http://www.ethics.state.tx.us/guides>.

<sup>6</sup> Neither Christian's state committee's disclosure reports nor the Committee's federal disclosure reports indicate that the former transferred funds to the latter, in violation of 11 C.F.R. § 110.3(d). *Compare* MUR 5304 (Cardoza) (Commission found reason to believe that respondent state and federal committees violated 11 C.F.R. § 110.3(d) because the state committee made a contribution to the federal committee). Since section 110.3(d) also refers to the transfer of assets, it may apply to the allegations concerning Christian's use of the car purchased with state campaign funds, and other alleged uses of state resources, in connection with Christian's federal race.

1 that "[a]ll expenditures reported on the state candidate/officeholder report covering October,  
2 November and December 2003 were specifically and directly related to my duties as a Texas  
3 State Representative," and "[n]one of the expenditures related to my campaign for federal office.  
4 All expenses related to my campaign for federal office were properly reported on the appropriate  
5 FEC report."<sup>7</sup> While conceding that he originally purchased a car "for use in my officeholder  
6 activities as a Texas State Representative," he maintains that that "[a]ppropriate payments for use  
7 of the vehicle were made for every mile the auto was used for any congressional campaign  
8 activity. The congressional account appropriately paid for each [federal] campaign use."  
9 Christian also maintains that "[a]s a state officeholder Texas law permits me to use my title,  
10 letterhead and the state seal. You will find other Texas congressional candidates doing the  
11 same."

12 Christian acknowledges that his federal campaign website and mailings had initially  
13 listed his Austin state office address, but that this "address was posted [on the website] in error  
14 and was removed as soon as we noticed the mistake." Christian further asserts that "no business  
15 for the congressional campaign was ever conducted from Austin and no campaign mail was ever  
16 received at that address."<sup>8</sup>

17 This Office reviewed the state committee's disclosure reports from January 1, 2003  
18 through June 30, 2004, which cover a significant period of time both before Christian announced

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<sup>7</sup> Christian's sworn response, which is notarized, is mis-dated by the notary as "the 17<sup>th</sup> of March, 2002," instead of "2004." Because responses, unlike complaints, are not required to be notarized, *see* 2 U.S.C. 437g(a)(1), this Office does not believe that this typographical error renders the response defective.

<sup>8</sup> Regarding the "Center, Texas" district address listed on Christian's website and direct mailings, Christian states that he owns a building at 204 Houston Street in Center, Texas, and he provides "separate offices inside this building to the congressional campaign and State Representative district office at no charge to either." Schedule III of Christian's federal financial disclosure statement, filed in connection with his congressional race, lists as a liability his mortgage for his "Center, TX Office," which is likely the building to which Christian's response refers.

1 his candidacy for federal office on October 22, 2003, and after his primary defeat on March 9,  
2 2004, to determine whether the state committee appears to have made expenditures in connection  
3 with Christian's federal campaign. Some questions are raised by payments for media-related  
4 expenditures, including radio programs or what appear to be advertisements promoting them, to  
5 Baldrige-Dumas Communications, Center Broadcasting Company, and KORI-FM during the  
6 period of time when Christian was a federal candidate, but the complainant did not point to any  
7 specific expenditures, much less their content.<sup>9</sup> Additionally, the state committee reports show  
8 roughly equivalent payments to these entities both before Christian's congressional race began,  
9 and after Christian was defeated in the primary, suggesting that the expenditures were all related  
10 to his state office, which he continued to hold throughout this time period.<sup>10</sup> Moreover, the  
11 Committee's FEC disclosure reports show that the Christian federal campaign made its own  
12 significant federal disbursements to media vendors.<sup>11</sup> Further, the Committee's FEC reports

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<sup>9</sup> We were not able to find any public records relating to the content of any radio programs or advertisements sponsored by Christian's state committee. Other than the expenses discussed here, this Office did not consider any other disbursements by the state committee during Christian's federal candidacy to raise serious questions pursuant to 2 U.S.C. § 441i(e)(1)(A) or 11 C.F.R. § 110.3(d).

<sup>10</sup> Specifically, Christian's state committee reports disclose monthly payments of \$175.00 from January 2003 through February 2004, described as being for "Printing & Publications: Ads: Radio-Program," to Baldrige-Dumas Communications, which owns several radio stations. The state committee continued to make monthly payments of \$175.00 to Baldrige-Dumas Communications in April, May and June 2004, after Christian's March 9, 2004 primary defeat. In addition, the state reports disclose a series of payments to Center Broadcasting Company, which owns a radio station, as follows: \$200.00 in January 2003, \$219.00 in February 2003; \$219.00 in March 2003; \$291.00 [sic] in April 2003 and \$1030.00 in June 2003. Payments of \$219.00 per month to Center Broadcasting continued as follows: July 2003 through January 2004 and March 2004 through June 2004. (Some of the Center Broadcasting expenditures are described as being for "Printing & Publications: Campaign Advertising;" others are described as being for "Printing & Publications: Ads: Radio Program.") Finally, Christian's state committee made payments to KORI-FM for "Printing & Publications: Ads" as follows: a total of \$430.00 in January 2003, \$100.00 monthly in February through June, 2003; \$100.00 monthly in August, October and November 2003; \$100.00 monthly in January through March 2004; a total of \$200.00 in April 2004; \$100.00 in May 2004 and \$100.00 in June 2004.

<sup>11</sup> They include \$281.45 to Complete Printing and Publishing on December 24, 2003; \$3,232.32 to Designer Graphics on February 3, 2004; a total of \$14,766.66 (for "mailout") to the Rainmakers Organization on February 3, 2004 and February 11, 2004; a total of \$22,250.00 to the Rainmakers Organization on February 20, 2004; \$7,469.75 to the Rainmakers Organization on March 3, 2004; \$219.00 to Center Broadcasting Company on March 3, 2004; (footnote continues on next page)

1 show several reimbursements to Christian's state account for use of the automobile.<sup>12</sup> Under  
2 these circumstances, and in conjunction with Christian's response to the complaint, this Office  
3 believes that the state committee's expenditures do not raise sufficient questions of compliance  
4 with the Act to warrant an investigation.<sup>13</sup> Similarly, with respect to his federal campaign  
5 website, Christian concedes that it contained the address of his Austin office for a short time, but  
6 states that the Austin address was removed as soon as the error was noticed, and no campaign  
7 mail went to that address. With this explanation, and no information to the contrary, there  
8 appears to be no reason to further pursue this issue.

9 With respect to Christian's loan to the Committee, the complainant's only claim, and he  
10 does not indicate that it is based on personal knowledge, is that the loan was "questionable,"  
11 whereas, in his response, Christian asserts that the loan of \$214,152.45 "was from my personal

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\$221.00 to Center Broadcasting, on March 31, 2004; \$791.85 to the Longview News Journal on March 10, 2003;  
and \$5,000.00 to the Strategy Group for Media on March 5, 2004.

<sup>12</sup> These reimbursements are listed on the Committee's FEC reports as follows: \$747.39 on January 2, 2004;  
\$490.35 on February 2, 2004; and \$1,367.80 on March 31, 2004.

<sup>13</sup> The state and federal disclosure reports contained no expenditures for office space, consistent with Christian's furnishing such space at no charge in a building he owns, which is not surprising, as neither campaign would have made any expenditure for this usage. It is not clear from the available information whether the Committee should have reported the fair market value of the office space at 204 Houston Street in Center, Texas, as an in-kind contribution with commercial value from Christian, pursuant to 11 C.F.R. § 104.3(a)(3)(i)(C)(ii). Public records available on Westlaw indicate that the building is Christian's home, in which case it may not have reportable commercial value; on the other hand, Christian's state financial disclosure form indicates that his sole proprietorship, Wayne Christian & Associates, is housed in the same building. That report also indicates that Christian owns two buildings on Houston Street and that he receives rental income from "Houston Street." Christian's federal financial disclosure form lists separate mortgages for an office, a home, and a "rent hse" on Houston Street. As the complainant did not raise an issue regarding a possible unreported in-kind contribution by Christian, and given the recommended disposition of this matter, it does not appear that it would be a worthwhile use of Commission resources to investigate this matter further. With respect to Christian's use of the Texas state seal and his official State Representative letterhead on his federal campaign literature, such use would not appear to constitute a violation of the Act or its underlying regulations by Christian or the Committee.

1 funds to the congressional campaign and has been repaid.”<sup>14</sup> In their Statement of Reasons in  
2 MUR 4960 (Hillary Rodham Clinton for U.S. Senate Exploratory Committee, issued December  
3 21, 2000), four Commissioners stated, “Absent personal knowledge, the Complainant, at a  
4 minimum, should have made a sufficiently specific allegation...so as to warrant a focused  
5 investigation that can prove or disprove the charge.” In their Statement of Reasons in MUR  
6 5141 (Moran for Congress, issued March 11, 2002), the Commission unanimously stated that  
7 “mere speculation...will not be accepted as true,” and that “a complaint will be dismissed if it  
8 consists of factual allegations that are refuted by sufficiently compelling evidence in responses to  
9 the complaint.” Under these criteria, there is an insufficient basis upon which to recommend that  
10 the Commission find reason to believe that Wayne Christian or the Committee violated the Act  
11 or the Commission’s regulations with respect to the referenced loan.<sup>15</sup>

12 For the foregoing reasons, this Office recommends that the Commission find no reason to  
13 believe that Wayne Christian and Wayne Christian for Congress and David Chadwick, as  
14 treasurer, violated 2 U.S.C. § 441i(e)(1)(A), that Wayne Christian for Congress and David  
15 Chadwick, as treasurer, violated 11 C.F.R. § 110.3(d), or that Wayne Christian and Wayne

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<sup>14</sup> It is not apparent whether the complaint intends to suggest that the state committee financed the loan (for which there is no evidence in the state committee or FEC disclosure reports) or whether it is “questionable” for other unspecified reasons.

<sup>15</sup> This Office has reviewed Christian’s federal and state financial disclosure reports, which reflect his personal assets and liabilities, in order to determine if some item raised an unmistakable “red flag” that would indicate that Christian’s loan was other than he stated. However, the categories defining his assets and liabilities are too broad to be helpful in this regard. For example, the state reports disclose that Christian had financial interests totaling “\$25,000 or more” in Wayne Christian and Associates, his investment firm, and “\$25,000 or more” in money market funds. Christian’s federal financial disclosure report, which covers January 1, 2003 through January 2, 2004, lists on Schedule VI five separate sources from which Christian received compensation “in excess of \$5,000”: AIG SunAmerica Securities, Inc.; Fidelity and Guaranty Life Insurance; Lafayette Life Insurance; Presidential Life Insurance; and Western United Life Insurance. While not definitive as to the amount of Christian’s assets at the time in question, the financial disclosure reports contain no information that would negate Christian’s ability to make a large personal loan to his campaign from his own funds.

Christian for Congress and David Chadwick, as treasurer, violated the Act or underlying regulations in connection with Christian's personal loan to the Committee, and close the file.

**III. RECOMMENDATIONS**

1. Find no reason to believe that Wayne Christian or Wayne Christian for Congress and David Chadwick, as treasurer, violated 2 U.S.C. § 441i(e)(1)(A).
2. Find no reason to believe that Wayne Christian for Congress and David Chadwick, as treasurer, violated 11 C.F.R. § 110.3(d).
3. Find no reason to believe that Wayne Christian or Wayne Christian for Congress and David Chadwick, as treasurer, violated the Federal Election Campaign Act of 1971, as amended, or Commission regulations in connection with Wayne Christian's personal loan to Wayne Christian for Congress.
4. Approve the appropriate letters.
5. Close the file.

Lawrence H. Norton  
General Counsel

Rhonda J. Vosdingh  
Associate General Counsel  
for Enforcement

Date

11/1/04

BY:

  
Susan L. Lebeaux  
Assistant General Counsel

  
Ruth Heilizer  
Attorney